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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *ECU* DEPUTY

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Attorneys for Plaintiff, Marpessa, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARPESSA, INC., a California corporation:

Plaintiff,

v.

MKT LICENCIAMENTOS, LTDA, aka  
MKT LINCENCIAMENTOS, LTDA, a  
Brazilian Corporation;  
PISTACHE CONFECOES, LTDA, a  
Brazilian corporation;

Defendants.

Case No.:

**08 CV 1283 BEN POR**

COMPLAINT FOR:

- 1) BREACH OF JOINT VENTURE AGREEMENT
- 2) BREACH OF PARTNERSHIP AGREEMENT
- 3) ACCOUNTING
- 4) BREACH OF DISTRIBUTION AGREEMENT
- 5) QUANTUM MERUIT
- 6) INTERFERENCE WITH CONTRACTUAL RELATIONS

Jury Trial Demanded

NOW COMES Plaintiff, MARPESSA, INC. ("MARPESSA"), a California corporation, for its Complaint against Defendants, alleging the following:

**PARTIES AND VENUE**

1. MARPESSA, is now and, at all times mentioned herein, was a corporation organized under the laws of the State of California with its principle place of business in the State of California, County of San Diego.

2. Defendant, MKT LICENCIAMENTOS, LTDA, aka MKT LINCENCIAMENTOS,

ORIGINAL

1 LTDA ("MKT"), is now and, at all times mentioned herein, was a foreign corporation formed and  
2 existing under the laws of the Country of Brazil and has its principal place of business in the city of  
3 Rio de Janeiro, Brazil.

4 3. Defendant, PISTACHE CONFECÇÕES, LTDA ("PISTACHE"), is now and, at all  
5 times mentioned herein, was a corporation formed and existing under the laws of the Country of  
6 Brazil and has its principal place of business in the city of Rio de Janeiro, Brazil.

7 4. Plaintiff is informed and believes and on that basis alleges that, at all relevant times,  
8 each of the Defendants, was the agent, employee or representative of each of the other Defendants and,  
9 in doing the things alleged to have been done in this Complaint, acted within the scope of such agency,  
10 representation or employment, or ratified the acts of the other.

11 5. Defendants, PISTACHE AND MKT, shall collectively be referred to in this Complaint  
12 as "SALINAS SWIMWEAR".

13 6. Venue is proper in this case because Defendants were required to perform a portion of  
14 their contract with Plaintiff in this jurisdiction and delivery of goods was to be made in this  
15 jurisdiction.

16 7. Plaintiff hereby demands a jury trial.

#### 17 **JURISDICTION AND VENUE**

18 8. This Court has jurisdiction over the subject matter of this Complaint pursuant to 28  
19 U.S.C. §1332, because there is complete diversity. Plaintiff is a citizen of California, while  
20 Defendants are citizens of the Country of Brazil.

21 9. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.

#### 22 **GENERAL ALLEGATIONS**

23 10. MARPESSA and SALINAS SWIMWEAR began a joint venture/partnership  
24 relationship in early 2000 pursuant to an oral partnership agreement. At the time the relationship was  
25 first formed, SALINAS SWIMWEAR sold the little known "Salinas" swimwear brand. SALINAS  
26 SWIMWEAR was based in Brazil with limited exposure to markets in the United States and other  
27 foreign territories. MARPESSA's employees were well known in the swimwear industry and had  
28 developed a strong reputation in the swimwear market over more than 10 years. SALINAS

SWIMWEAR solicited MARPESSA to form a joint venture/partnership relationship wherein MARPESSA would work with SALINAS SWIMWEAR in the development, production, marketing and distribution of SALINAS SWIMWEAR's product line.

11. From 2000 until early 2008, MARPESSA successfully marketed and distributed SALINAS SWIMWEAR's products in the United States and in other territories, substantially increasing the market for SALINAS SWIMWEAR's products throughout the world.

12. At the time MARPESSA began promoting SALINAS SWIMWEAR's products, SALINAS SWIMWEAR had limited exposure and few contacts with retailers outside of Brazil. With respect to the United States, SALINAS SWIMWEAR had virtually no infrastructure in place - no sales force, no distribution system, no website, no marketing strategy, no catalogue and minimal presence with the primary marketing shows and in magazines. MARPESSA utilized its contacts, knowledge and experience to work with SALINAS SWIMWEAR in order to implement a strategy to develop and promote SALINAS SWIMWEAR's brand.

13. In order to create awareness of the "Salinas" brand, MARPESSA invested large amounts of time and money that has resulted in the "Salinas" brand being currently identified as a high-end swimwear brand - which has generated millions of dollars of sales for SALINAS SWIMWEAR's products. MARPESSA invested money and time into developing the brand with the expectation that SALINAS SWIMWEAR would continue to deliver its products in a timely fashion, would work with MARPESSA to continue to develop the brand, and would maintain the existing relationship as long as SALINAS SWIMWEAR intended to sell its products in the United States. MARPESSA is responsible for 100% of the contacts and clients SALINAS SWIMWEAR has in the United States and has generated contacts for SALINAS SWIMWEAR in Italy, the United Kingdom, Greece, Costa Rica, Panama, Spain, Korea, Canada, Canary Islands, Indonesia, Thailand and France.

14. Between 2000 and 2008, MARPESSA assisted SALINAS SWIMWEAR in the design of the merchandise to be marketed and sold outside of Brazil. MARPESSA, as the liaison between customers and SALINAS SWIMWEAR, had a pulse on the interests of the non-Brazilian market place. MARPESSA was an integral part of the development and design process and worked with SALINAS SWIMWEAR each year to create marketable swimwear products. MARPESSA sent its

1 president to Brazil for at least six weeks each year. During the time MARPESSA's president was in  
2 Brazil she would work with SALINAS SWIMWEAR's designers everyday to recommend new or  
3 different designs or, alternatively, changes to sample designs produced by SALINAS SWIMWEAR  
4 for the upcoming product line. MARPESSA participated in every aspect of design and development.

5 15. The arrangement between SALINAS SWIMWEAR and MARPESSA was as follows:

6 a. Both MARPESSA and SALINAS SWIMWEAR were engaged in a joint  
7 venture/partnership relationship whereby both parties were to work together to develop merchandise  
8 and market and distribute the products in the United States and other foreign territories.

9 b. While both parties had input throughout the development, marketing and  
10 distribution process, SALINAS SWIMWEAR was to invest money in the development and  
11 production phase, while MARPESSA's principal investment of money and time went toward  
12 promotions, marketing, sales and distribution.

13 c. SALINAS SWIMWEAR was to timely deliver samples in order to allow  
14 MARPESSA to obtain orders. SALINAS SWIMWEAR was also required to timely fulfill (i.e.  
15 deliver complete orders) orders procured by MARPESSA.

16 d. Both MARPESSA and SALINAS SWIMWEAR were to obtain a portion of  
17 the revenues generated from the United States and other foreign market sales.

18 16. MARPESSA invested millions of dollars into the "Salinas" brand and the marketing,  
19 sales, distribution infrastructure in the United States as part of its joint venture/partnership with  
20 SALINAS SWIMWEAR in order to market the products and create a vast distribution system.  
21 Examples of MARPESSA's efforts in growing the infrastructure, brand and developing the goodwill  
22 of SALINAS SWIMWEAR's products include:

- 23 • Hiring a staff of 15, including a sales team, customer service, and shipping personnel;
- 24 • Maintaining an office capable of overseeing a nationwide distribution system in the  
25 United States;
- 26 • Creation of the www.salinasswimwear.com website, including development of all  
27 content, merchant account, delivery, and associated graphics;

28 ///

- 1       •     Arranging and paying for photo shoots showcasing SALINAS SWIMWEAR's products
- 2 and swimwear lines;
- 3       •     Arranging and paying for booths for trade shows throughout the United States;
- 4       •     Attendance at all major tradeshows to promote SALINAS SWIMWEAR's products and
- 5 incurring costs for fees, travel expenses, hotel, models, line sheets and employee expenses;
- 6       •     Designing and producing catalogs and POPs for SALINAS SWIMWEAR's
- 7 merchandise and banners/images for trade show booths;
- 8       •     Hiring of a full time graphic designer;
- 9       •     Additional line sheets for customers;
- 10       •     Paying for advertisements in major swimwear magazines;
- 11       •     Paying for SIMA membership fees ; and
- 12       •     Paying for product presence in ultra high-end showrooms.

13       17.    For 2007 alone, MARPESSA spent over \$1,500,000 in marketing, advertising,

14 distributing and selling the Salinas brand and SALINAS SWIMWEAR products. MARPESSA spent

15 similar monies in developing the "Salinas" brand in each of the previous years as well.

16       18.    The parties continued their joint venture/partnership relationship for seven and a half

17 years until SALINAS SWIMWEAR terminated the relationship after receipt of investment funds

18 from a third party investor in or around 2007.

19       19.    Since SALINAS SWIMWEAR received its outside investment funds in 2007, it has

20 sought to alter the joint venture/partnership relationship it has with MARPESSA and attempted to

21 either terminate its association with MARPESSA or cut down MARPESSA's share of profits in the

22 venture. Since the new party became involved with SALINAS SWIMWEAR, SALINAS

23 SWIMWEAR has no longer been interested in honoring its agreements with MARPESSA.

24       20.    SALINAS SWIMWEAR has either intentionally or negligently failed to live up to its

25 obligations to provide MARPESSA with timely samples (used to obtain orders) and has slowed down

26 or failed to make scheduled deliveries. Deliveries that were made for the 2008 product line were not

27 only late, but were incomplete, creating problems with MARPESSA's customers. MARPESSA was

28 unable to satisfy several orders for SALINAS SWIMWEAR's products due to SALINAS

SWIMWEAR's untimely delivery and has lost over \$285,000 in cancelled purchase orders and currently maintains approximately \$325,000 in inventory that has been difficult to sell due to SALINAS SWIMWEAR's late delivery of the products.

21. In January of 2008, without just cause or reason, SALINAS SWIMWEAR breached its agreement with MARPESSA and announced that it would no longer be honoring its obligations effective March 1, 2008. In reliance on the joint venture/partnership relationship, MARPESSA spent time and money to promote and market the Salinas brand throughout 2007 for the 2008 season. It is typical in the fashion industry that products for the 2008 season are created and promoted in 2007. In this case, all of the marketing and promotion for the 2008 season was already done by MARPESSA at the time SALINAS SWIMWEAR stated it would no longer be honoring its agreement with MARPESSA.

22. MARPESSA is now left with un-purchased inventory and has been frozen out of SALINAS SWIMWEAR's distribution operations. MARPESSA has been paid no compensation for its contributions to the venture, the value it has added to SALINAS SWIMWEAR's brand and the losses it has sustained as a result of SALINAS SWIMWEAR's breach of its agreement with MARPESSA.

23. Throughout the 2008 season, SALINAS SWIMWEAR has been reaping the benefit of MARPESSA's distribution efforts and investments and has been selling its swimwear products in the United States and other foreign territories without providing MARPESSA with a share of the revenues.

### **FIRST CAUSE OF ACTION**

#### **BREACH OF PARTNERSHIP/JOINT VENTURE AGREEMENT**

**(Plaintiff v. All Defendants)**

24. Plaintiff hereby incorporates each and every preceding paragraph as though set forth in full herein.

25. Since 2000, SALINAS SWIMWEAR and MARPESSA have been engaged in the following oral joint venture/partnership agreement:

a. Both MARPESSA and SALINAS SWIMWEAR were engaged in a joint



1 venture/partnership relationship whereby both parties were to work together to develop merchandise  
2 and market and distribute the products in the United States and other foreign territories.

3 b. While both parties had input throughout the development, marketing and  
4 distribution process, SALINAS SWIMWEAR was to invest money in the development and  
5 production phase, while MARPESSA's principal investment of money and time went toward  
6 promotions, marketing, sales and distribution.

7 c. SALINAS SWIMWEAR was to timely deliver samples in order to allow  
8 MARPESSA to obtain orders. SALINAS SWIMWEAR was also required to timely fulfill (i.e.  
9 deliver complete orders) orders procured by MARPESSA.

10 d. Both MARPESSA and SALINAS SWIMWEAR were to obtain a portion of  
11 the revenues generated from the United States and other foreign market sales. SALINAS  
12 SWIMWEAR was to deliver the merchandise and MARPESSA was to pay SALINAS SWIMWEAR  
13 a portion of the revenues generated from the sales within ninety days of delivery of the merchandise.

14 e. SALINAS SWIMWEAR was to provide MARPESSA with a portion of the  
15 revenues generated from SALINAS SWIMWEAR's sale of products made in Italy, United Kingdom,  
16 Greece, Costa Rica, Panama, Spain, France, Korea, Canada, Canary Islands, Indonesia and Thailand.

17 26. MARPESSA performed all of its obligations under the joint venture/partnership  
18 agreement.

19 27. SALINAS SWIMWEAR breached the agreement by failing to timely deliver products,  
20 unilaterally ending the relationship and selling products within the United States and other foreign  
21 territories without providing MARPESSA with a share of the profits.

22 28. SALINAS SWIMWEAR's breaches have resulted in damages to Plaintiff in an  
23 amount to be proven at trial but in excess of the jurisdictional minimum.

24 **SECOND CAUSE OF ACTION**

25 **BREACH OF FIDUCIARY DUTY**

26 **(Plaintiff v. All Defendants)**

27 29. Plaintiff hereby incorporates each and every preceding paragraph as though set forth in  
28 full herein.

1        30. As a joint venturer/partner, SALINAS SWIMWEAR was a fiduciary of MARPESSA  
2 and had a duty of care and duty of loyalty to MARPESSA in accordance with *Cal. Corp. Code*  
3 16404.

4        31. SALINAS SWIMWEAR breached its duty to MARPESSA by failing to timely deliver  
5 merchandise and directly competing with the partnership by selling products within the United States  
6 and other foreign territories without providing the partnership and MARPESSA with a share of the  
7 profits.

8        32. MARPESSA has been damaged by SALINAS SWIMWEAR's breaches in that  
9 MARPESSA has lost over \$1,500,000 in investments it made in marketing and distributing of  
10 SALINAS SWIMWEAR's 2008 swimwear line and has been deprived of the profits it would have  
11 gained had SALINAS SWIMWEAR honored its obligations under the agreement. Additionally,  
12 MARPESSA has lost over \$600,000 in immovable inventory and cancelled purchase orders.

13        33. Additionally, MARPESSA provided SALINAS SWIMWEAR with its international  
14 distributor contacts in Italy, United Kingdom, Greece, Costa Rica, Panama, Spain, France, Korea,  
15 Canada, Canary Islands, Indonesia and Thailand. MARPESSA was to receive a portion of the  
16 revenues generated through the sales SALINAS SWIMWEAR made in these foreign markets. Since  
17 February of 2007, SALINAS SWIMWEAR has failed to provide MARPESSA with its share of the  
18 profits generated in these foreign territories.

19        34. SALINAS SWIMWEAR's breach of duty to MARPESSA was the direct and  
20 proximate cause of damage to Plaintiff in an amount to be proven at trial and in excess of the  
21 jurisdictional minimum.

22                                    **THIRD CAUSE OF ACTION**

23                                    **ACCOUNTING**

24                                    **(Plaintiff v. All Defendants)**

25        35. Plaintiff hereby incorporates each and every preceding paragraph as though set forth in  
26 full herein.

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28        ///



1        36. Pursuant to *Cal. Corp. Code* §16404 SALINAS SWIMWEAR owes a duty to account  
2 to the partnership and hold as trustee for the partnership any property, profit, or benefit derived by  
3 SALINAS SWIMWEAR in the conduct of the partnership business.

4        37. SALINAS SWIMWEAR has failed to account to MARPESSA the profits and  
5 revenues it has gleaned from the sale of its 2008 swimwear line in the United States and other foreign  
6 territories.

7        38. In accordance with *Cal. Corp. Code* §16405, MARPESSA demands an accounting of  
8 all profits SALINAS SWIMWEAR gleaned from the sale of SALINAS SWIMWEAR products for  
9 the 2008 swimwear line in the United States and the foreign territories of Italy, United Kingdom,  
10 Greece, Costa Rica, Panama, Spain, France, Korea, Canada, Canary Islands, Indonesia and Thailand.

11                                    **FOURTH CAUSE OF ACTION**

12                                    **BREACH OF DISTRIBUTION AGREEMENT**

13                                    **(Plaintiff v. All Defendants)**

14        39. Plaintiff hereby incorporates each and every preceding paragraph, with the exception  
15 of paragraphs 24 through 38, as though set forth in full herein.

16        40. Since 2000, SALINAS SWIMWEAR and MARPESSA have been engaged in the  
17 following oral distribution agreement:

18                    a. MARPESSA was to invest monies and time in marketing, selling and  
19 distributing SALINAS SWIMWEAR's products.

20                    b. SALINAS SWIMWEAR was to exclusively utilize MARPESSA for  
21 distribution of its goods in the United States.

22                    c. SALINAS SWIMWEAR was to timely deliver samples as well as the any and  
23 all ordered merchandise on or before the date agreed upon by the parties at the time MARPESSA  
24 informed SALINAS SWIMWEAR of an order.

25                    d. SALINAS SWIMWEAR was to provide MARPESSA with a portion of the  
26 revenues generated from SALINAS SWIMWEAR's sale of products made in Italy, United Kingdom,  
27 Greece, Costa Rica, Panama, Spain, France, Korea, Canada, Canary Islands, Indonesia and Thailand.

28        ///

e. Because the marketing efforts of SALINAS SWIMWEAR's swimwear products was to occur the year prior to the swimwear reaching the market, SALINAS SWIMWEAR was to refrain from terminating the agreement without one year notice.

41. MARPESSA performed all of its obligations under the distribution agreement

42. SALINAS SWIMWEAR breached the agreement by failing to timely deliver products, unilaterally ending the relationship and utilizing other distributors to assist in selling products within the United States and other foreign territories without providing MARPESSA with a share of the profits.

43. MARPESSA has been damaged by SALINAS SWIMWEAR's breaches in that MARPESSA has lost in excess of \$1,500,000 that it invested in the marketing and distribution of SALINAS SWIMWEAR's 2008 swimwear line and has been deprived of the profits it would have gained had SALINAS SWIMWEAR honored its obligations under the agreement. Additionally, MARPESSA has lost over \$600,000 in immovable inventory and cancelled purchase orders.

44. Additionally, MARPESSA provided SALINAS SWIMWEAR with its international distributor contacts in Italy, United Kingdom, Greece, Costa Rica, Panama, Spain, France, Korea, Canada, Canary Islands, Indonesia and Thailand. MARPESSA was to receive a portion of the revenues generated through the sales SALINAS SWIMWEAR made in these foreign markets. Since February of 2007, SALINAS SWIMWEAR has failed to provide MARPESSA with its share of the profits generated in these foreign territories.

45. SALINAS SWIMWEAR's breaches have resulted in damages to Plaintiff in an amount to be proven at trial but in excess of the jurisdictional minimum.

### **FIFTH CAUSE OF ACTION**

#### **UNJUST ENRICHMENT**

**(Plaintiff v. All Defendants)**

46. Plaintiff hereby incorporates each and every preceding paragraph as though set forth in full herein.

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47. Beginning in 2000, MARPESSA and SALINAS SWIMWEAR entered into a relationship wherein the parties jointly developed, marketed, distributed and sold SALINAS SWIMWEAR products in the United States and other foreign markets.

48. Throughout the 2007 year, MARPESSA invested heavily in the marketing and distribution of SALINAS SWIMWEAR's 2008 swimwear line. Throughout the 2007 year, MARPESSA invested over \$1,500,000 of money and thousands of hours of time in building up and marketing SALINAS SWIMWEAR's 2008 swimwear line.

49. SALINAS SWIMWEAR accepted the benefit it received from MARPESSA's marketing efforts.

50. SALINAS SWIMWEAR has failed and refused to continue its contractual relationship with MARPESSA and has further refused to compensate MARPESSA for the monies it invested in marketing SALINAS SWIMWEAR's 2008 swimwear line.

51. SALINAS SWIMWEAR is estopped from denying the existence or enforceability of any contract between SALINAS SWIMWEAR and MARPESSA as this would result in its unjust enrichment by obtaining the benefit of the work performed and money MARPESSA invested for the benefit of SALINAS SWIMWEAR without paying the reasonable value thereof.

#### **SIXTH CAUSE OF ACTION**

#### **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

#### **(Plaintiff v. All Defendants)**

52. Plaintiff incorporates each and every preceding allegation of this complaint as though set forth fully herein.

53. SALINAS SWIMWEAR knew that MARPESSA had actual and existing contractual relationships with the customers to whom it sold SALINAS SWIMWEAR's products and its international distributors that were financially beneficial to MARPESSA..

54. Notwithstanding SALINAS SWIMWEAR's actual knowledge of these relationships, SALINAS SWIMWEAR intentionally refused to honor its obligations under its agreement with MARPESSA and refused to timely deliver products to MARPESSA. SALINAS SWIMWEAR also

began either directly selling its swimwear products to certain of MARPESSA's customers and/or utilizing distributors to sell SALINAS SWIMWEAR products to MARPESSA's customers. SALINAS SWIMWEAR's intentional actions caused the disruption and breakdown of MARPESSA's contractual relationships with the clients to whom it sold SALINAS SWIMWEAR products.

55. SALINAS SWIMWEAR's actions have caused MARPESSA to suffer damages as a result of its disrupted contractual relationships in an amount to be proven at trial but in excess of the jurisdictional minimum.

56. The aforementioned acts of SALINAS SWIMWEAR were willful, wanton, malicious, and oppressive in that SALINAS SWIMWEAR knew of MARPESSA's agreements with its clients and nevertheless proceeded in the manner alleged above knowing that its actions would deprive MARPESSA of the benefits of its agreements with its clients. SALINAS SWIMWEAR engaged in despicable conduct that subjected MARPESSA to a cruel and unjust hardship in conscious disregard of SALINAS SWIMWEAR's rights, so as to justify an award of exemplary and punitive damages.

WHEREFORE, PLAINTIFF prays for relief as follows:

**As to the First Cause of Action**

1. For past and future general, incidental and consequential damages in a sum not yet fully ascertained and according to proof at trial;

**As to the Second Cause of Action**

1. For past and future general, incidental and consequential damages in a sum not yet fully ascertained and according to proof at trial;

**As to the Third Cause of Action**

1. For an accounting of all profits and revenue SALINAS SWIMWEAR gleaned from the sale of its 2008 swimwear line.

**As to the Fourth Cause of Action**

1. For past and future general, incidental and consequential damages in a sum not yet fully ascertained and according to proof at trial;

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**As to the Fifth Cause of Action**

1. For past and future general, incidental and consequential damages in a sum not yet fully ascertained and according to proof at trial;

**As to the Sixth Cause of Action**

1. For past and future general, incidental and consequential damages in a sum not yet fully ascertained and according to proof at trial;

2. For punitive damages;

**As to All Claims**

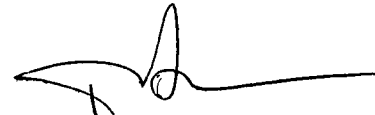
1. For pre-and post-judgment interest;

2. For costs of suit; and

3. For such other and further relief as the Court may deem just.

Dated: July 17 2008

Respectfully Submitted,



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Timothy P. Dillon, Esq.,  
Attorney for Plaintiff,  
Marpessa, Inc.

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 153095 - MB

July 17, 2008  
11:12:55

**Civ Fil Non-Pris**

USAO #.: 08CV1283 CIVIL FILING

Judge...: ROGER T BENITEZ

Amount..:

\$350.00 CK

Check#.: BC11404

**Total-> \$350.00**

FROM: MARPESSA INC VS MKT LICENCIAME

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Marpessa, Inc.

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dillon & Gerardi, APC 4660 La Jolla Village Drive, Suite 775; San Diego CA. 92122 (U.S.A.)

## DEFENDANTS

MKT LICENCIAMENTOS, LTDA aka MKT  
LICENCIAMENTOS, LTDA and Pischke

County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known) **08 CV 1283 BEN POR DEPUTY**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

Brazil

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:  
Breach of Agreement

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Exceeds \$75000 CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/17/08

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

153095

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

RB 07/17/08

ORIGINAL